

CURRENT USE TAXATION UNDER RSA 79-A

A Presentation for the New Hampshire Tax
Collector's Assn (NHTCA)
Spring Workshops 2023

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I. ORIGINS AND PURPOSE



Original Constitutional Language:

"impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and residents within the said state"
N.H. Const. Pt. II, Art. 5.

Prevented "current use" assessments (and also prevents graduated income taxes).

November 1968 Constitutional Amendment:

"The general court may provide for the assessment of any class of real estate at valuations based upon the current use thereof."

N.H. Const. Pt. II, Art. 5-B

RSA 79-A was first adopted in 1973. See, Chapter 372, Laws of 1973.



Purpose is found in RSA 79-A:1 and includes:

- Providing a healthful and attractive outdoor environment
- Maintaining the character of the state's landscape
- Conserving land, water, forest, agricultural and wildlife resources.



II. ADMINISTRATION AND OPERATION

A statutorily established "Current Use Board" of fourteen (14) members (RSA 79-A:3 (II)).

The Board's duties are essentially to establish the "criteria and current use values" to be used under RSA 79-A. RSA 79-A:4 (I). These are established on a statewide basis.



4

Currently (it has changed over time), there are three (3) statutory categories of open space land:



• Farm Land



• Forest Land



• "Unproductive" Land.

See, RSA 79-A:2 (IX).

Each has a statutory definition in RSA 79-A:2, and each also has an expanded definition as set forth in the Board's regulations. See, Chapter Cub, Section 304.

5

Generally, to be eligible, a parcel must be at least ten (10) acres in size. The Board has the right to establish criteria to allow parcels of less than ten (10) acres. RSA 79-A:4 (I).

The Board has chosen to reduce the ten (10) acre requirement in three (3) categories:

- (i) wetlands of any size,
- (ii) tree farms of any size
- (iii) crop-growing areas that meet a certain threshold of income production.

See, Cub 304.01 (b) (3-5).



A parcel can qualify even if it is divided by a municipal boundary. RSA 79-A:26.

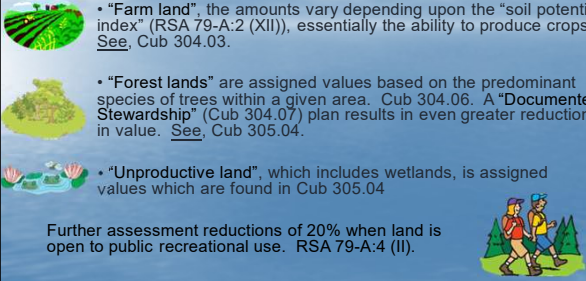
The land must be "contiguous" - definition of "contiguous" is found in Cub 301.04, which describes land as "more than one parcel of land which is connected, disregarding whether it is divided by a highway, railbed, river or water body, or the boundary of a political subdivision". *Id.*

6

Each category of open space is assigned a range of values:


- **"Farm land"**, the amounts vary depending upon the "soil potential index" (RSA 79-A:2 (XII)), essentially the ability to produce crops. See, Cub 304.03.
- **"Forest lands"** are assigned values based on the predominant species of trees within a given area. Cub 304.06. A **"Documented Stewardship"** (Cub 304.07) plan results in even greater reductions in value. See, Cub 305.04.
- **"Unproductive land"**, which includes wetlands, is assigned values which are found in Cub 305.04

Further assessment reductions of 20% when land is open to public recreational use. RSA 79-A:4 (II).




7


At the local level, the requirement is on local assessing officials to appraise open space land at values set by the Board. RSA 79-A:5(I).



In the early years of the program, several legal challenges, most from the Town of Croydon, attempted to question the validity of the process or the Board's authority. In nearly all cases, the challenges were rejected.



In cases, such as forest land, where a range of values is set, a municipality must not routinely and uniformly apply the highest available value, but instead must consider the specified factors (e.g. class, size, type, grade and location) in setting a value within the range.



8

III. APPLICATION PROCESS

An owner who wishes to have land classified as open space must apply by April 15th of a given tax year.

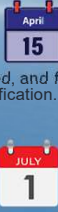
DRA Form A-10. Applicant must include:

- Map or drawing.
- Categories of open space must be elected, and forest land must be noted as to the predominant tree classification.
- Filing Fee- recording costs.

Response required by July 1st.

Can only be denied if criteria are not met.

Appeal to BTLA (RSA 79-A:9) or Superior Court (RSA 79-A11) if application is denied (6 months).



9

IV. CHANGE OF USE AND LUCT

Under RSA 79-A:7 (I), land which has previously been classified and assessed at current use values, shall be subject to a "land use change tax" (LUCT) when it is changed to a use which does not qualify for current use assessment.

The LUCT is calculated at ten (10%) percent of the "full and true" value of the land at the time of the change.



Certain actions do not trigger a LUCT:

- Change from one eligible category to another
- Certain eminent domain activities
- Change to Conservation restriction under RSA 79-B.

LUCT bill is addressed to the owner at the time of the change in use. RSA 79-A:7 (II).



Form of bill is prepared by DRA (A-5) and delivered to the tax collector, along with a special warrant authorizing the collector to collect the tax, Form A-5W. See, RSA 79-A: 7 (II) (b).

The billing must be sent within 18 months of the date upon which local assessing officials received notice of the change from the owner or actually discover that a change has occurred. RSA 79-A: 7 (II) (c).

Failure to send a timely billing can result in the tax being ruled uncollectable.

Meadowcroft Development vs. Town of Windham, Rockingham County Superior Court 2010-CV-895.



16

The payment of an issued LUCT bill is due within thirty (30) days.

Eighteen (18%) percent interest begins to run on any unpaid bill. RSA 79-A: 7 (II) (d).

RSA 79-A:7 (II) (e) which provides that a "lien" is created under the statute, which lasts twenty-four (24) months from the notice or discovery date of the change of use.

This means that the collector must begin a lien imposition process under RSA Chapter 80 in sufficient time to impose the lien no later than twenty-four (24) months from the "change date".

Upon payment of the LUCT, the tax collector then forwards the appropriate paid tax bill to the Registry for the purpose of releasing the land in question from the effects of the contingent lien. RSA 79-A: 7 (II) (c).


The A-5 form notes whether the release is a full release of the original lien or a partial release.

17

In recent years, the biggest questions which have arisen under this statute are:

- When does a "change of use" occur and what (how much) land "comes out" of current use which in turn triggers the LUCT; and
- What adjustments, if any, are made to the ten (10%) percent LUCT assessment?

Three (3) circumstances when a change of use occurs and a LUCT shall become payable:



- (1) Actual construction begins on the site, causing physical changes in the earth, such as road building, utility installation, site work or construction;
- (2) Topsoil, gravel or minerals are removed from a site (with certain exceptions for agricultural and forestry activities);
- (3) When a site no longer qualifies by reason of size (i.e. other parts have been taken out, dropping the remainder under ten (10) acres).

RSA 79-A:7 (IV). Cub 307.

18

Only the number of acres on which a physical change occurs will be subject to the LUCT.



There is an exception where land which is physically unchanged will still come out of current use if it is needed to meet density requirements. RSA 79-A:7 (V) (b). See also, Dana Patterson, Inc. vs. Town of Merrimack, 130 N.H. 353 (1988).

In 2010 the Legislature added some specific rules related to condominium developments, providing for removal of the development area and the percentage interest associated with units to be reclassified. RSA 79-A:7(V)(c). See also, Cub 307.03

Subdivision development is addressed by RSA 79-A:7 (V) (a). This particular statute provides that:



(a) When a road is constructed or other utilities installed pursuant to a development plan which has received all necessary local, state or federal approvals, all lots or building sites, including roads and utilities, shown on the plan and served by such road or utilities shall be considered changed in use, with the exception of any lot or site, or combination of adjacent lots or sites under the same ownership, large enough to remain qualified for current use assessment under the completed development plan.

Lot by lot removal (until remainder is under the qualifying size).

Appropriate valuation to be used on the assessment of the LUCT.

Under Board rules that were in effect through 1998, the value for assessment of LUCT did not include the value of "betterments" made to the land, or the enhanced value resulting from those betterments. See, Appeal of Van Lunen, supra at 88-89, citing Cub 308.01 (b) (now repealed).

Subsequent to Van Lunen, the Board revised its rules to provide that the value shall be based upon "the highest and best use of the land, including the value of all betterments to the land". Cub 308.02(b).




Abatements and appeals of LUCT taxes are governed by RSA 79-A:10.

The request must be filed with the local assessing officials within two (2) months of the tax date. RSA 79-A:10 (I).

The Selectmen or other assessing officials are obligated to grant or deny the request, in writing, within six (6) months of the tax date. RSA 79-A:10(II).

Assuming that the request does not produce the desired outcome, the taxpayer can appeal to either the Board of Tax and Land Appeals (BTLA) or Superior Court within eight (8) months of the tax date. 79-A:10 (III).




22

V. WHERE THE MONEY GOES

Generally, all funds collected through LUCT assessments go to the General Fund of the city or town. RSA 79-A:25 (I). There are two (2) possible variations on this result:

- Under RSA 79-A:25 (II-IV), a municipality may vote to place a percentage (up to 100%), a specified amount (up to a dollar value), or a combination thereof, into the conservation fund under the control of the Conservation Commission under RSA 36-A:5 (III).
- Municipality may vote to set up a land use change tax fund under RSA 79-A:25-a. Provides a holding location for funds to allow their separate appropriation RSA 79-A:25-a (II).



23

QUESTIONS?



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24
